

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 Deutsche Bank National Trust Company, as
Trustee for Holders of the GSAA Home
4 Equity Trust 2006-11 Asset-Backed
Certificates Series 2006-11,
5
6 Plaintiff

7 v.

8 Star Hill Homeowners Association, et al.,
9 Defendants

Case No.: 2:17-cv-02536-JAD-PAL

**Order Granting Motions
to Dismiss and for Judgment
on the Pleadings**

[ECF Nos. 18, 26]

10 Deutsche Bank National Trust Company brings this diversity action to challenge the 2013
11 non-judicial foreclosure sale of the home at 5055 Quiet Falls Court in Las Vegas, Nevada, on
12 which it claims a deed of trust securing a mortgage on the property.¹ The Bank sues the
13 Star Hill Homeowners Association (the HOA) and SFR Investments Pool I, LLC (the purchaser
14 at the foreclosure sale). It seeks damages, injunctive relief, and a declaration that its deed of trust
15 was not extinguished by the sale even though Nevada law holds that a properly conducted HOA
16 non-judicial foreclosure sale will extinguish a first deed of trust.²

17 SFR moves to dismiss, and the HOA seeks judgment on the pleadings, both arguing that
18 the Bank's claims are time barred under the applicable state statutes of limitations.³ Because I
19 find that the Bank's filing of this action nearly five years after the foreclosure deed recorded
20 renders all of its claims time barred, I grant the motions.

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22 ¹ ECF No. 1.

² *SFR Investments Pool I v. U.S. Bank*, 334 P.3d 408, 419 (Nev. 2014).

³ ECF Nos. 18, 26. I find these motions suitable for disposition without oral argument. LR 78-1.

1 **Factual Background⁴**

2 Deutsche Bank claims that it is the beneficiary of a deed of trust securing a loan on the
3 home at 5055 Quiet Falls Court in Las Vegas, Nevada. The home is located within the Star Hill
4 Homeowners Association and subject to the HOA's codes, covenants, and restrictions (CC&Rs),
5 which require the owners of property within this planned development to pay certain
6 assessments. When the assessments on this home became delinquent, the HOA, through its
7 agent Nevada Association Services, Inc. (NAS),⁵ commenced non-judicial foreclosure
8 proceedings under Chapter 116 of the Nevada Revised Statutes. The foreclosure sale occurred
9 on January 25, 2013, and the trustee's deed in favor of purchaser SFR recorded on January 30,
10 2013.⁶

11 The Nevada Legislature gave HOAs a superpriority lien against residential property for
12 certain delinquent assessments.⁷ As the Nevada Supreme Court held in *SFR Investments Pool I*
13 *v. U.S. Bank* in 2014, because NRS 116.3116(2) gives an HOA "a true superpriority lien, proper
14 foreclosure of" that lien under the non-judicial foreclosure process created by NRS Chapters 107
15 and 116 "will extinguish a first deed of trust."⁸ The Bank alleges that its predecessor in interest,
16 Bank of America, asked NAS to identify the superpriority portion of the delinquent assessments

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20 ⁴ These facts come from the complaint's factual allegations, which I accept as true for purposes
of these motions to dismiss.

21 ⁵ The Bank also named NAS as a defendant, but NAS has not appeared. Though the Bank filed a
notice of intent to take default against NAS in December 2017, *see* ECF No. 24, the Bank has
22 not moved for entry of default.

⁶ ECF No. 1 at ¶ 32.

⁷ Nev. Rev. Stat. § 116.3116; *SFR*, 334 P.3d at 409.

⁸ *SFR*, 334 P.3d at 419.

1 on this home so it could pay it off, and when NAS refused, the Bank did its own calculation and
2 tendered the amount. “Despite the tender,” the HOA foreclosed.⁹

3 The Bank filed this action on September 9, 2017, four years and eight months after the
4 foreclosure sale recorded.¹⁰ It asserts four claims: (1) quiet title and declaratory relief against all
5 defendants, (2) breach of NRS 116.1113 against the HOA and NAS, (3) wrongful foreclosure
6 against the HOA and NAS, and (4) injunctive relief against SFR.

7 SFR moves to dismiss all claims against it as time barred.¹¹ It contends that the Bank’s
8 claims against it are governed by a three-year statute of limitations that expired more than a year
9 before this action was filed. And even if the court applies Nevada’s longer, four-year catch-all
10 statute, those claims are still time barred. The HOA brings a separate motion for judgment on
11 the pleadings to similarly argue that the Bank’s claims against it are too late.¹² The Bank
12 opposes both motions, contending that its claims are governed by longer, not-yet-expired
13 statutory periods, that its claims haven’t even ripened yet, and that it should get leave to amend.¹³

14 Discussion

15 A statute-of-limitations defense may be raised by a motion to dismiss “if the running of
16 the statute is apparent on the face of the complaint.”¹⁴ “When a motion to dismiss is based on
17 the running of the statute of limitations, it can be granted only if the assertions of the complaint,
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20 ⁹ ECF No. 1 at ¶¶ 28–32.

21 ¹⁰ *Id.*

22 ¹¹ ECF No. 18.

¹² ECF No. 26.

¹³ ECF Nos. 23, 28.

¹⁴ *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980).

1 read with the required liberality, would not permit the plaintiff to prove that the statute was
2 tolled.”¹⁵

3 **A. SFR’s Motion to Dismiss [ECF No. 18]**

4 The Bank’s first cause of action, entitled “Quiet Title/Declaratory Judgment Against All
5 Defendants,”¹⁶ alleges that, “[a]s a result of Star Hill’s foreclosure sale on January 25, 2013, SFR
6 claims an interest in the property, and [that it] owns the property free and clear of [the Bank’s]
7 senior deed of trust.”¹⁷ To resolve those competing interests, the Bank prays for “a declaration,
8 pursuant to 28 U.S.C. § 2201, NRS 30.040, and NRS 40.010, that the HOA sale did not
9 extinguish [its] senior deed of trust.”¹⁸

10 SFR contends that this claim is governed by the three-year statute of limitations in NRS
11 11.190(3)(a), which covers “action[s] upon a liability created by statute, other than a penalty or
12 forfeiture.”¹⁹ SFR argues that “we are not dealing with a true” quiet-title claim because the Bank
13 has only a lien interest; it never held title. Instead, the Bank’s claim is “based solely on statute
14 and compliance with same.”²⁰ And even if we apply the longer, four-year catch-all statute, SFR
15 contends, the Bank’s claims are still eight months late.²¹

16 The Bank responds that its first claim for relief is better characterized as “a declaratory
17 judgment claim seeking a ruling regarding the enforceability of its deed of trust,” and under NRS
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19 ¹⁵ *Id.*

20 ¹⁶ ECF No. 1 at 6.

21 ¹⁷ *Id.* at ¶ 36.

22 ¹⁸ *Id.* at ¶ 53.

¹⁹ ECF No. 18 at 4.

²⁰ *Id.*

²¹ *Id.* at 6.

1 106.240, “the beneficiary of a deed of trust has 10 years from the date the debt becomes wholly
2 due to foreclose on the deed of trust.”²² But NRS 106.240 only provides that a mortgage debt
3 that goes unpaid for ten years will be “conclusively presumed” satisfied, and the lien will be
4 presumed discharged.²³ It does not place a ten-year statute of limitations on declaratory actions
5 to enforce deeds of trust. The Bank’s reliance on *Facklam v. HSBC Bank USA*²⁴ is similarly
6 misplaced. In *Facklam*, the Nevada Supreme Court held merely that non-judicial foreclosure
7 actions are not subject to the statutes of limitations in NRS Chapter 11 because those time bars
8 apply only to judicial actions, and a non-judicial foreclosure is not a judicial action.²⁵ So
9 “lenders are not barred from foreclosing on mortgaged property merely because the statute of
10 limitations for contractual remedies on the note has passed.”²⁶ But the Bank is not pursuing non-
11 judicial foreclosure; it filed a judicial action seeking declaratory relief, injunctive relief, and
12 damages. These claims all fall under the “civil action” umbrella and are subject to the
13 limitations periods in NRS Chapter 11.²⁷

14 The Bank also suggests that its first claim for relief is governed by the five-year statutes
15 of limitations for quiet-title claims found in NRS 11.070 and 11.080.²⁸ It is true that some quiet-
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17 ²² ECF No. 23 at 4.

18 ²³ Nev. Rev. Stat. § 106.240; *Pro-Max Corp. v. Feenstra*, 16 P.3d 1074, 1077 (Nev. 2001)
19 (“NRS 106.240 . . . extinguishes certain real property debts ten years after they become due
absent recorded extensions.”).

20 ²⁴ ECF No. 23 at 5.

21 ²⁵ *Facklam v. HSBC Bank USA*, 401 P.3d 1068, 1070 (Nev. Sept. 14, 2017).

22 ²⁶ *Id.*

²⁷ See Nev. Rev. Stat. § 11.010 (providing that “Civil actions can only be commenced within the
periods prescribed in this chapter, after the after the cause of action shall have accrued, except
where a different limitation is prescribed by statute.”).

²⁸ ECF No. 23 at 5.

1 title claims are governed by NRS 11.070 and 11.080, but not all of them are. NRS 11.080
2 provides a five-year deadline for claims for “the recovery of real property, or for the recovery of
3 the possession thereof other than mining claims”²⁹ But the Bank’s claim is not an action for
4 the recovery of property or its possession. If the Bank wins, it gets only a lien against the
5 property. So NRS 11.080 has no application to the Bank’s claims in this case.

6 NRS 11.070 affords a five-year statute of limitations for actions or defenses “founded
7 upon the title to real property or to rents or to services out of the same.”³⁰ The Bank’s claims
8 would not fall under this statute either, however, because they are not founded upon title, rents,
9 or services, but upon lien rights created by a deed of trust. So I am unpersuaded that any of
10 Nevada’s quiet-title statutes of limitation apply to the Bank’s claims.

11 But I cannot agree with SFR that the Bank’s quiet-title claim is governed by a three-year
12 limitations period either. NRS 11.090(3)(a) imposes a three-year statute of limitations on actions
13 “upon a liability created by statute, other than a penalty or forfeiture.”³¹ SFR summarily states
14 that “the Bank’s ‘quiet title’ is based solely on statute and compliance with same,”³² but
15 statutory-compliance is just one of the Bank’s bases.³³ When this claim is evaluated in its
16 entirety, it is clear that this claim is better categorized as the type of quiet-title claim recognized
17 by the Nevada Supreme Court in *Shadow Wood Homeowners Association, Inc. v. New York*
18 *Community Bancorp*—an action “seek[ing] to quiet title by invoking the court’s inherent
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20 ²⁹ Nev. Rev. Stat. § 11.080.

21 ³⁰ Nev. Rev. Stat. § 11.070; *see also Bank of Amer. v. Country Garden Owners Ass’n*, 2:17-cv-
01850-APG-CWH, 2018 WL 1336721, at *2 (D. Nev. Mar. 14, 2018).

22 ³¹ Nev. Rev. Stat. § 11.190(3)(a).

³² ECF No. 18 at 4.

³³ *See* ECF No. 1 at 7–10 (also pleading a due-process violation, commercial unreasonableness, and SFR’s inability to claim bona fide purchaser status).

1 equitable jurisdiction to settle title disputes.”³⁴ The resolution of this type of claim is part of
2 “[t]he long-standing and broad inherent power of a court to sit in equity and quiet title, including
3 setting aside a foreclosure sale if the circumstances support such action.”³⁵ As this claim does
4 not fit neatly into any other statutory limitations period, I am left with the catch-all four-year
5 deadline in NRS 11.220.³⁶ Because the foreclosure sale took place on January 25, 2013, and this
6 action was filed four years and eight months later on September 29, 2017, the Bank’s quiet-title
7 claim is time barred.

8 In a final effort to save its quiet-title claim, the Bank argues that this claim didn’t begin to
9 accrue until the Nevada Supreme Court decided the *SFR* case in 2014 because it didn’t know
10 until then that such foreclosure sales extinguish deeds of trust.³⁷ The notion that *SFR* announced
11 a new rule was rejected by the Nevada Supreme Court in *K&P Homes v. Christiana Trust* when
12 it explained that the *SFR* decision “did not create new law or overrule existing precedent; rather,
13 that decision declared what NRS 116.3116 has required since the statute’s inception. Therefore,
14 that decision necessarily applies retroactively.”³⁸ Lenders were well aware of NRS 116.3116
15 long before *SFR*.³⁹ As the Bank alleges in its complaint, its predecessor in interest, Bank of
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17 ³⁴ *Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp*, 366 P.3d
1105, 1110–1111 (Nev. 2016).

18 ³⁵ *Id.* at 1112.

19 ³⁶ NRS 11.220 states, “An action for relief, not hereinbefore provided for, must be commenced
within 4 years after the cause of action shall have accrued.”

20 ³⁷ *See* ECF No. 14 at 5–6.

21 ³⁸ *K&P Homes v. Christiana Trust*, 398 P.3d 292, 295 (Nev. 2017).

22 ³⁹ *See SFR*, 334 P.3d at 414 (noting that the banks could have easily avoided the effects of NRS
116.3116’s lien-extinguishment feature by paying off the HOA liens “to avert loss of [their]
security” or by establishing “an escrow for [HOA] assessments to avoid having to use [their]
own funds to pay delinquent dues.”); *see also Nationstar Mortg. LLC v. Amber Hills II*
Homeowners Ass’n, 2016 WL 1298108, at *8 (D. Nev. Mar. 31, 2016) (proposing two more
ways for a bank to avoid losing its lien interest by HOA foreclosure: “It could attend the

1 America, asked the HOA for a ledger of the superpriority amount due months before assigning
2 the deed of trust to Deutsche Bank just days before the foreclosure sale, demonstrating that it
3 was well aware of NRS 116.3116 and its operation.⁴⁰ So, once the foreclosure deed was
4 recorded on January 30, 2013, the Bank had the facts to support its wrongful-foreclosure and
5 NRS 116.1113 claims. Because the *SFR* decision did not change or redefine the Bank’s rights or
6 obligations under Nevada’s non-judicial foreclosure scheme, it was the foreclosure sale or the
7 recording of that deed just days later—not the *SFR* decision—that started the Bank’s four-year
8 clock running. Accordingly, I grant SFR’s motion and dismiss the Bank’s first and fourth⁴¹
9 causes of action as time barred.

10 **B. The HOA’s Motion for Judgment on the Pleadings [ECF No. 26]**

11 The HOA moves for judgment on the Bank’s claims against it for wrongful foreclosure
12 and breach of NRS 116.1113 as similarly time barred. It contends that both claims are governed
13 by NRS 11.190(3)(a)’s three-year statute of limitations on actions “upon a liability created by
14 statute, other than a penalty or forfeiture.”⁴² A claim for wrongful foreclosure “challenges the
15 authority behind the foreclosure, not the foreclosure act itself.”⁴³ NRS Chapter 116, which
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18 statutorily-required public auction and purchase the property. Additionally, if the HOA or its
19 agent refuses to provide the superpriority lien amount or to accept payment, the lienholder could
20 sue for a declaration of the superpriority amount and to require the HOA to accept that amount in
21 satisfaction of the superpriority lien.”).

22 ⁴⁰ ECF No. 1 at ¶¶ 15, 28–32.

⁴¹ Because the Bank’s fourth cause of action, entitled “Injunctive Relief against SFR,” ECF No.
1 at 13, is more accurately characterized as the requested remedy for the substantive claim
against SFR pled in the Bank’s first cause of action, it rises and falls with this quiet-title claim.
And because that substantive claim is time barred, I dismiss this injunctive relief “claim” as time
barred, too.

⁴² Nev. Rev. Stat. § 11.190(3)(a).

⁴³ *McKnight Family, LLP v. Adept Mgmt.*, 310 P.3d 555, 559 (Nev. 2013).

1 authorizes HOAs to enforce liens by non-judicial foreclosure, is the authority behind the sale at
2 issue here. And the Bank alleges that the HOA violated various notice provisions of NRS
3 Chapter 116 when conducting this sale.⁴⁴ The Bank’s wrongful-foreclosure claim is thus an
4 “action upon a liability created by statute,” it is governed by the three-year statute of limitations
5 in NRS 11.190(3)(a), and it is time barred because it was not filed within three years of the
6 foreclosure sale.

7 The same is true for the Bank’s second cause of action, entitled “Breach of NRS
8 116.1113.” NRS 116.1113 states that “[e]very contract or duty governed by [NRS Chapter 116]
9 imposes an obligation of good faith in its performance or enforcement.”⁴⁵ In effect, this statute
10 just makes it clear that Nevada’s policy that “[a]n implied covenant of good faith and fair dealing
11 is recognized in every contract under Nevada law”⁴⁶ applies to CC&Rs, too. For this claim, the
12 Bank repackages the notice violations that it alleges in its wrongful-foreclosure claim as
13 breaches of the HOA’s “duty of good faith” under NRS 116.1113.⁴⁷ Because the good-faith
14 obligation in NRS 116.1113 is also a liability created by statute, this claim is similarly barred by
15 the three-year statute of limitations.

16 The Bank offers two arguments to avoid this claim bar. It first argues that these claims
17 haven’t even begun to accrue yet because it has not sustained injury and won’t be injured unless
18 and until “a court finds” that its “deed of trust was extinguished and [rendered] unenforceable as
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21 ⁴⁴ See ECF No. 1 at ¶¶ 16–22.

22 ⁴⁵ Nev. Rev. Stat. § 116.1113.

⁴⁶ *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 971 P.2d 1251, 1256 (Nev. 1998)
(citing *Pemberton v. Farmers Ins. Exchange*, 858 P.2d 380, 382 (Nev. 1993)).

⁴⁷ ECF No. 1 at ¶¶ 55–65.

1 a result of” the foreclosure sale, and only then will the statute begin to run.⁴⁸ But the Bank does
2 not need a judge to declare the effect of the foreclosure sale in order for the deed of trust to be
3 extinguished. As the Nevada Supreme Court explained in *SFR Investments Pool 1 v. U.S. Bank*,
4 “NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of which will
5 extinguish a first deed of trust.”⁴⁹ So the Bank suffers its injury at the moment of foreclosure,
6 not years later when it gets a court to confirm or disregard that injury.⁵⁰

7 Next, the Bank contends in a two-sentence argument that these claims should be
8 governed by NRS 11.190(1)(b)’s six-year limitations period for actions “upon a contract,
9 obligation, or liability founded upon an instrument in writing. . . .”⁵¹ That writing, it claims, was
10 the HOA’s recorded CC&Rs, in which the HOA “promised not to extinguish the senior deed of
11 trust.”⁵² But the legal nature of these claims remains the enforcement of a liability created by
12 statute, which is governed by the three-year statute in NRS 11.190(3)(a). In its second cause of
13 action, the Bank asserts not a claim for breach of the CC&Rs, but a claim for breach of NRS
14 116.1113.⁵³ The bulk of the Bank’s third cause of action is that the HOA’s failure to comply
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16 ⁴⁸ ECF No. 14 at 5.

17 ⁴⁹ *SFR*, 334 P.3d at 419.

18 ⁵⁰ *See also Bank of America v. Country Garden Owners Ass’n*, 2018 WL 1336721, *3 (D. Nev.
19 Mar. 14, 2018) (reasoning, “Because [the Bank’s] interest in the property was called into
20 question at the time of the foreclosure sale due to the HOA’s superpriority lien, [the Bank] knew
21 as of the foreclosure sale that either its deed of trust was not extinguished so it was not damaged,
22 or its deed of trust was extinguished so it was damaged. No later than when the trustee’s deed
upon sale was recorded, [the Bank] knew the content of the HOA’s notices, . . . and knew the
property had been sold at a foreclosure sale Thus, based on the complaint’s allegations, [the
Bank] had the facts supporting its contention that the HOA foreclosure sale was improperly
conducted as of the date of the foreclosure sale.”).

⁵¹ ECF No. 28 at 6.

⁵² *Id.*

⁵³ *See* ECF No. 1 at 10–12.

1 with Chapter 116's foreclosure procedures rendered the sale wrongful. And to the extent that the
2 Bank is also alleging that the foreclosure was wrongful because the HOA included a mortgage-
3 savings clause in its CC&Rs, promising not to jeopardize the rights of a senior deed-of-trust
4 holder, the Nevada Supreme Court squashed this theory in *SFR*.⁵⁴ It explained that NRS
5 116.1104 states that "Chapter 116's 'provisions may not be varied by agreement, and rights
6 conferred by it may not be waived except as expressly provided in' Chapter 116."⁵⁵ And
7 because nothing in that chapter "expressly provides for a waiver of the HOA's right to a priority
8 position for the HOA's super priority lien, . . . [t]he mortgage savings clause thus does not affect
9 NRS 116.3116(2)'s application in this case."⁵⁶ So, the only legally viable portion of the Bank's
10 wrongful-foreclosure claim is an action founded "upon a liability created by statute," and it is
11 time barred. I thus grant the HOA's motion for judgment on the Bank's second and third claims
12 for relief on this basis.⁵⁷

13 **C. No leave to amend**

14 In its oppositions to both motions, the Bank offers a conclusory request for leave to
15 amend.⁵⁸ In neither request does the Bank explain what would change if it were given leave to
16 amend or how amendment could cure these fatal deficiencies that are the result of its waiting too
17 long to file this complaint. Though I recognize that leave to amend must be "freely" given
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19 ⁵⁴ *SFR*, 334 P.3d at 418–19.

20 ⁵⁵ *Id.* at 419.

21 ⁵⁶ *Id.*

22 ⁵⁷ Because I am dismissing these claims as time barred, I need not—and do not—reach the
defendants' other bases for dismissal. And because the Bank has not indicated how amendment
could cure this fatal problem with its claims, I also deny as futile its summary request for leave
to amend. *See, e.g.*, ECF No. 42 at 9.

⁵⁸ *See* ECF No. 23 at 6 and 28 at 8.

1 “when justice so requires,” the Bank’s failure to even hint at how justice dictates amendment
2 here compels me to deny its perfunctory requests.⁵⁹

3 **Conclusion**

4 IT IS THEREFORE ORDERED that SFR’s Motion to Dismiss [ECF No. 18] is
5 **GRANTED**. The Bank’s first and fourth causes of action are DISMISSED with prejudice as
6 time barred.

7 IT IS FURTHER ORDERED that the Star Hill Homeowners Association’s Motion for
8 Judgment on the Pleadings [ECF No. 26] is **GRANTED**. And with good cause appearing and
9 no reason to delay, the Clerk of Court is directed to **ENTER PARTIAL JUDGMENT in favor**
10 **of SFR Investments Pool 1, LLC and Star Hill Homeowners Association, and against the**
11 **Plaintiff on all claims against them.**

12 IT IS FURTHER ORDERED that **Deutsche Bank National Trust Company has until**
13 **June 8, 2018, to seek default against lone remaining defendant Nevada Association**
14 **Services, Inc. or dismiss its claims against this defendant. If Deutsche Bank takes no steps**
15 **to bring the remainder of this case to conclusion by June 8, 2018, the Court will dismiss the**
16 **Bank’s remaining claims without prejudice under FRCP 41(b) for want of prosecution and**
17 **close this case**, as it does not appear that any steps have been taken to prosecute those claims
18 since the summons was served on NAS on October 2, 2017.

19 Dated: May 23, 2018

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U.S. District Judge Jennifer A. Dorsey

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⁵⁹ Local Rule 15-1(a) requires parties moving to amend to “attach the proposed amended pleading” to the motion. The Bank’s failure to offer a proposed amended complaint provides a second, independent reason to deny its amendment requests.